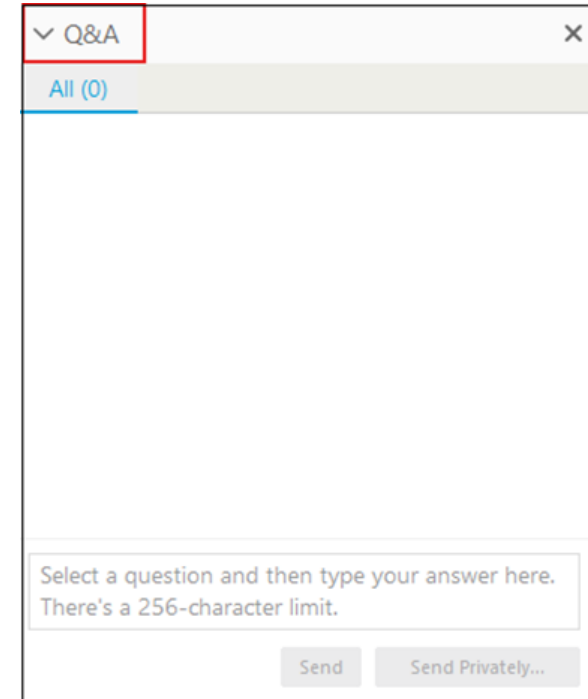


SC CDBG Implementation Workshop Series

February 2021

Questions?

- ▶ All attendees have been muted
- ▶ Submit your content-related and troubleshooting questions via the Q&A box (send to All Panelists)

A screenshot of a Q&A interface. At the top, there is a tab labeled 'Q&A' with a downward arrow and a close button 'X'. Below the tab is a header 'All (0)' with a blue underline. The main area is a large empty text box. At the bottom, there is a smaller text box with the placeholder text 'Select a question and then type your answer here. There's a 256-character limit.' Below this are two buttons: 'Send' and 'Send Privately...'.

Q&A

All (0)

Select a question and then type your answer here.
There's a 256-character limit.

Send Send Privately...

AGENDA

- ▶ Welcome from the SC Department of Commerce, Grants Administration (GA) Staff
- ▶ Introductions
- ▶ Common Pitfalls
 - Procurement and Contracting
 - Labor Standards and Construction Management

Trainers



Les Warner, ICF



Carrie Kronberg, ICF

Poll

- ▶ How many years of experience do you have with the CDBG Program?
 - a. 0–3 years
 - b. 3–5 years
 - c. 5–10 years
 - d. 10–20 years
 - e. 20+ years



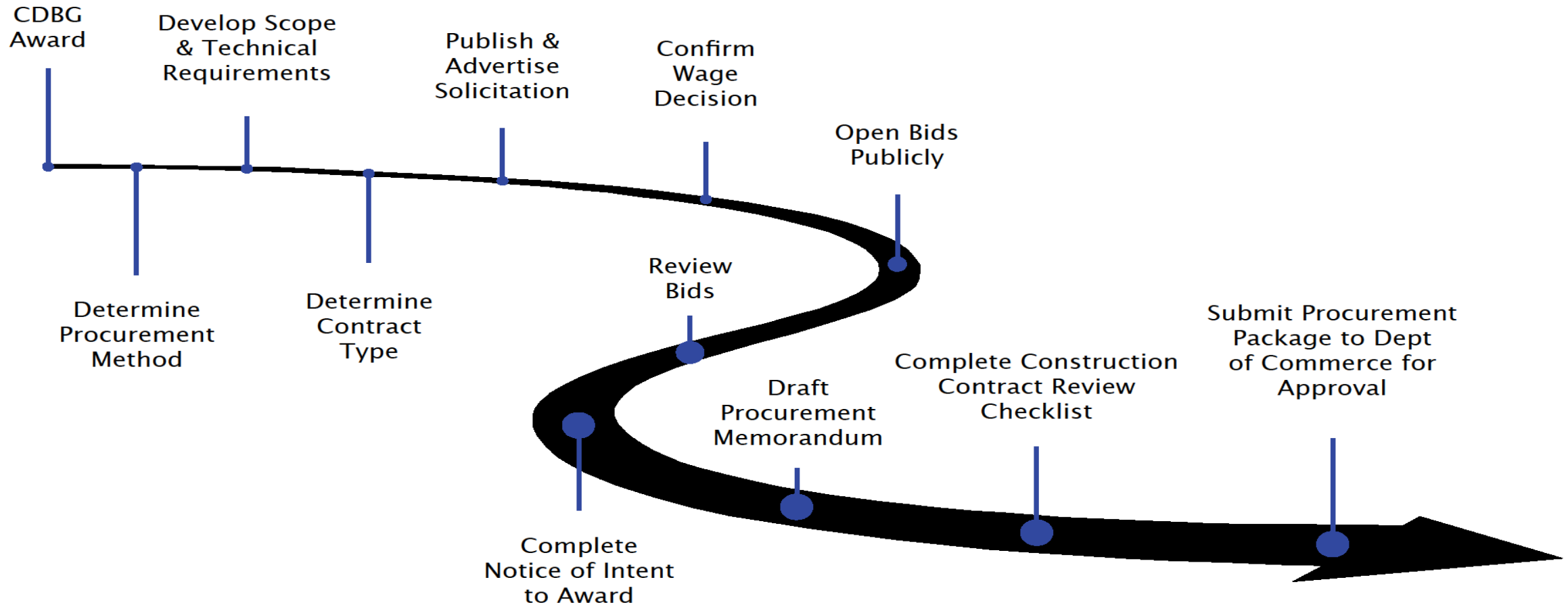
Procurement and Contracting

Basic Procurement Requirements

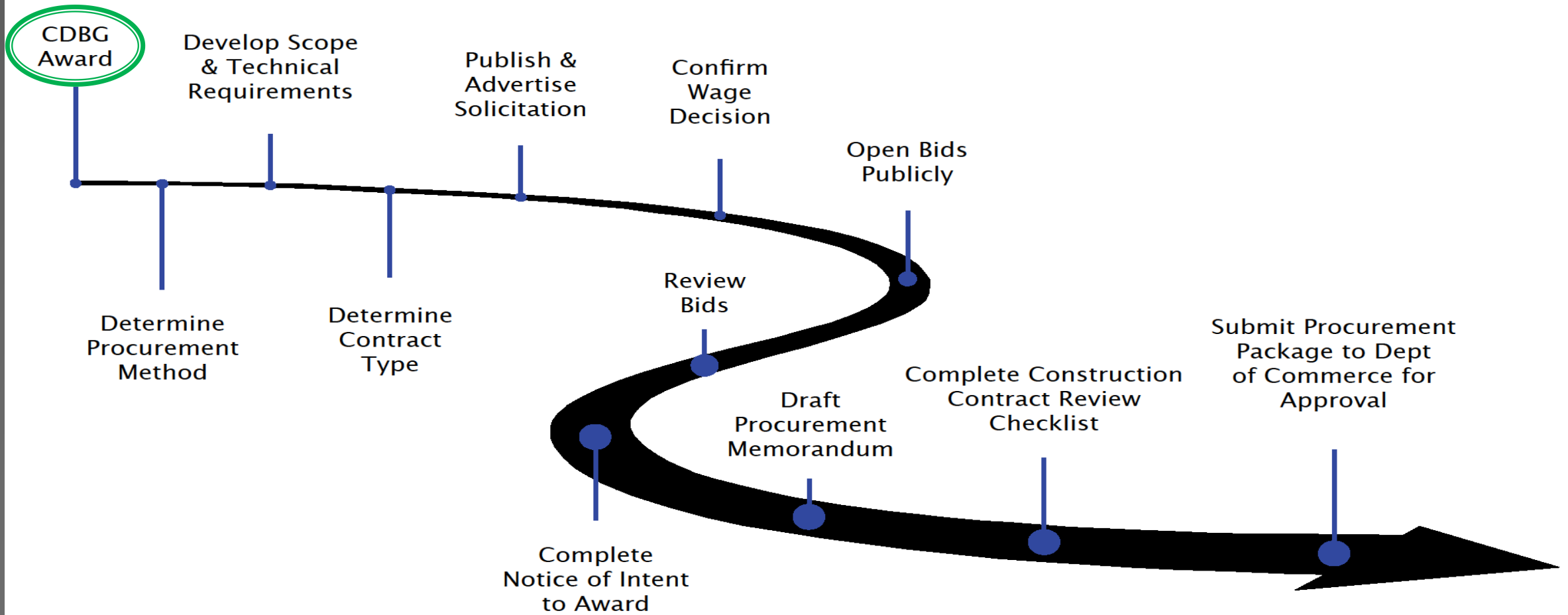
- ▶ Grantees/subrecipients must comply with Federal (2 CFR 200) & state procurement rules if using CDBG funds to pay for goods and services
- ▶ Key principles:
 - Ensure maximum open & free competition
 - No geographic preferences
 - Include protest procedures
- ▶ Grantees must have written procurement procedures to ensure compliance

General Procurement Guidelines

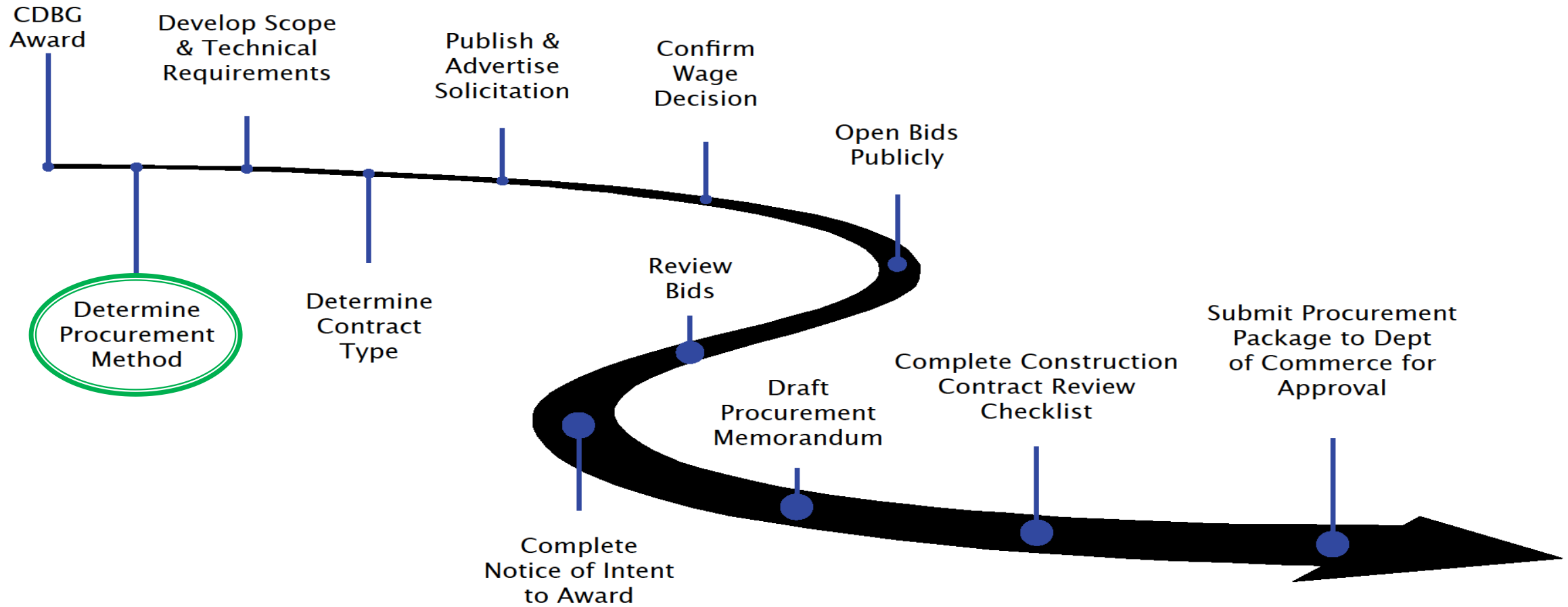
- Conduct cost & price analysis for every procurement or modification
- All potential offerors should be advised that the application with cost estimate is available for review
- No geographic preferences allowed (i.e., cannot restrict to local firms only)
- Must incorporate M/WBE & Section 3 requirements
- Review procurements to avoid purchasing any unnecessary goods & services with Federal funds



PROCUREMENT TIMELINE



PROCUREMENT TIMELINE



PROCUREMENT TIMELINE

Determine Procurement Method:

Small Purchase Procedures (Ch. 8, p. 10–11)

- ▶ Small purchases are those < \$150,000
 - Typically used for purchase of goods or services
 - **Not allowed for construction or A/E services**
 - OK for other professional services (attorney, appraisers, asbestos inspection/air monitoring, etc.)
 - Must have written list of materials/specifications
 - Obtain written price quotations by line item from at least 3 suppliers
 - Award to lowest quote that meets specs

Determine Procurement Method:

Competitive Proposals (Ch. 8, p. 14–15)

- ▶ Used for services where selection based on factors in addition to cost like A/E or consulting services
- ▶ Involves soliciting via RFQ or RFP
- ▶ Persons or firms that prepare proposals or elements of them (e.g., SOW, rating criteria) may not also compete for the subject work
- ▶ Award based on qualifications related to selection criteria in the RFP/ RFQ & may not necessarily be lowest bidder
- ▶ Only firm, fixed-price contracts

Determine Procurement Method:

Requests for Qualifications (Ch. 8, p. 16–17)

- ▶ Primary selection criteria are qualifications based on the grantee/project needs
 - RFQ narrows field OR creates pool of qualified firms
 - RFQ selection criteria use benchmarks; firms meeting the benchmarks are deemed qualified
 - RFQ generally used before an RFP, which follows to select 1 firm (& get pricing) from a qualified pool
 - Only exception to this is that GA allows use of RFQ only (w/ no RFP) for complicated A/E services

Determine Procurement Method:

Requests for Proposals (Ch. 8, p. 15–16)

- ▶ Key components of an RFP
 - Weighted selection criteria to determine winner
 - Requests both technical and rate/price information
 - Cost must be tied to a specific scope of services
 - Can be done with or without RFQ
 - Minimum of 15–day publication

Determine Procurement Method:

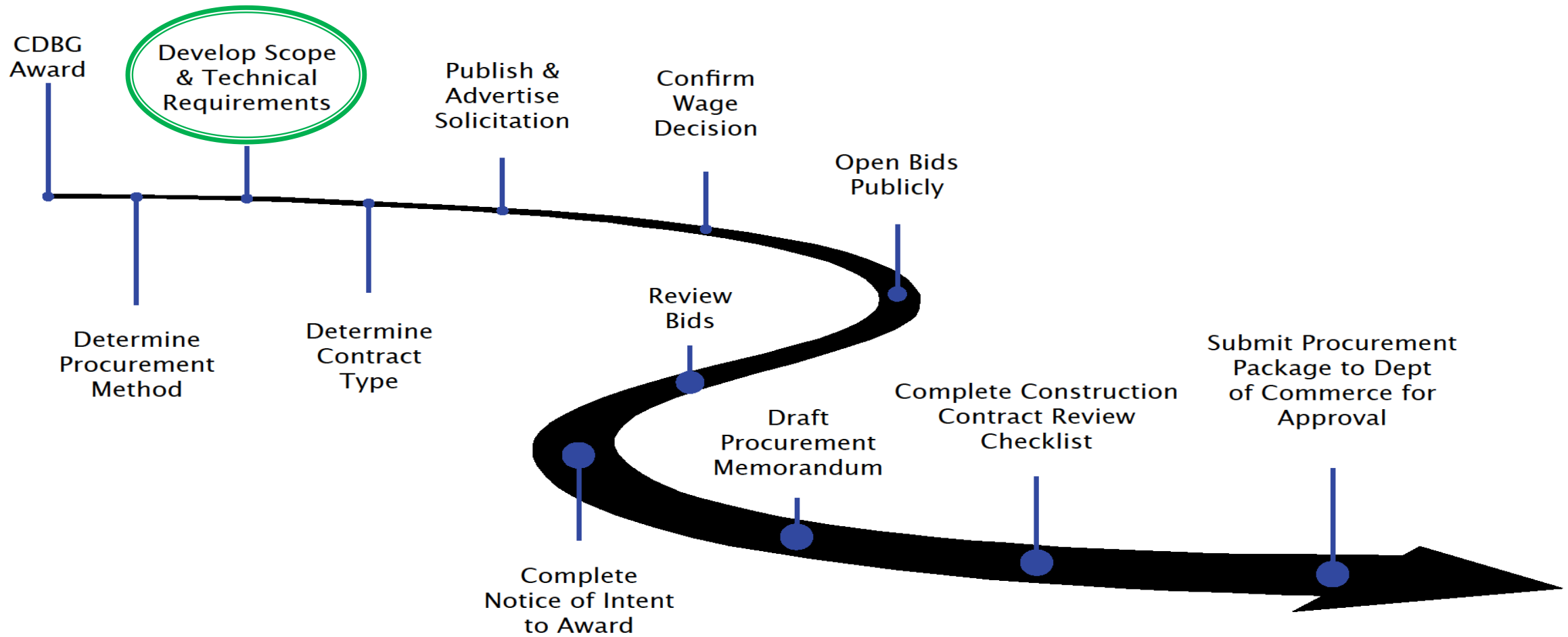
Non-Competitive Procurement (Ch. 8, p. 17–18)

- ▶ Non-competitive or sole source procurement is only allowed under very limited circumstances and requires advance GA authorization to use
 - Only allowed when:
 - The item is available from only one source, OR
 - A public exigency or emergency exists such that it will not permit a delay beyond the time needed to follow procurement methods, OR
 - After solicitation of several sources, competition is determined inadequate
 - Example: utilities contract to install streetlights
 - Must conduct and **document** negotiations regarding scope & price

Determine Procurement Method:

Competitive Sealed Bids (Ch. 8, p. 11–14)

- ▶ This method is used for all construction work or goods >\$150,000
- ▶ Requires public advertising for at least 30 days
- ▶ Requires firm, fixed-price contract
- ▶ Must be awarded to the responsible bidder whose bid conforms with all material requirements and is lowest in price



PROCUREMENT TIMELINE

Develop Scope & Technical Requirements

- ▶ Technical Requirements (Ch 8, p. 21)
 - An architect or engineer typically prepares the technical specifications
 - Provide clear and accurate descriptions of material, product, and service requirements
 - Requirements cannot unduly restrict competition
 - May include qualitative statements on material, products, services, and minimum essential standards
 - May use “brand name or approved equal” language to define standards
 - Must get GA approval prior to specifying only a brand name without “or equal” wording

Develop Scope & Technical Requirements

- ▶ Technical Requirements, continued (Ch 8, p. 21)
 - Ensure contract period is within grant period prior to bidding
 - Ensure consistency throughout the solicitation and specifications with regards to owner, bid expiration, contract period, etc.
 - Describe how bidding errors will be handled

Develop Scope & Technical Requirements

- ▶ Technical Requirements: Crosscutting (Ch. 8, p. 21)
 - Section 3 hiring and contracting requirements
 - Minority and Women Business Enterprises
 - Labor standards requirements
 - SAM eligibility/registration
 - Environmental clearance
 - Uniform Relocation Act: Any real property acquisition must also be complete, consistent with requirements

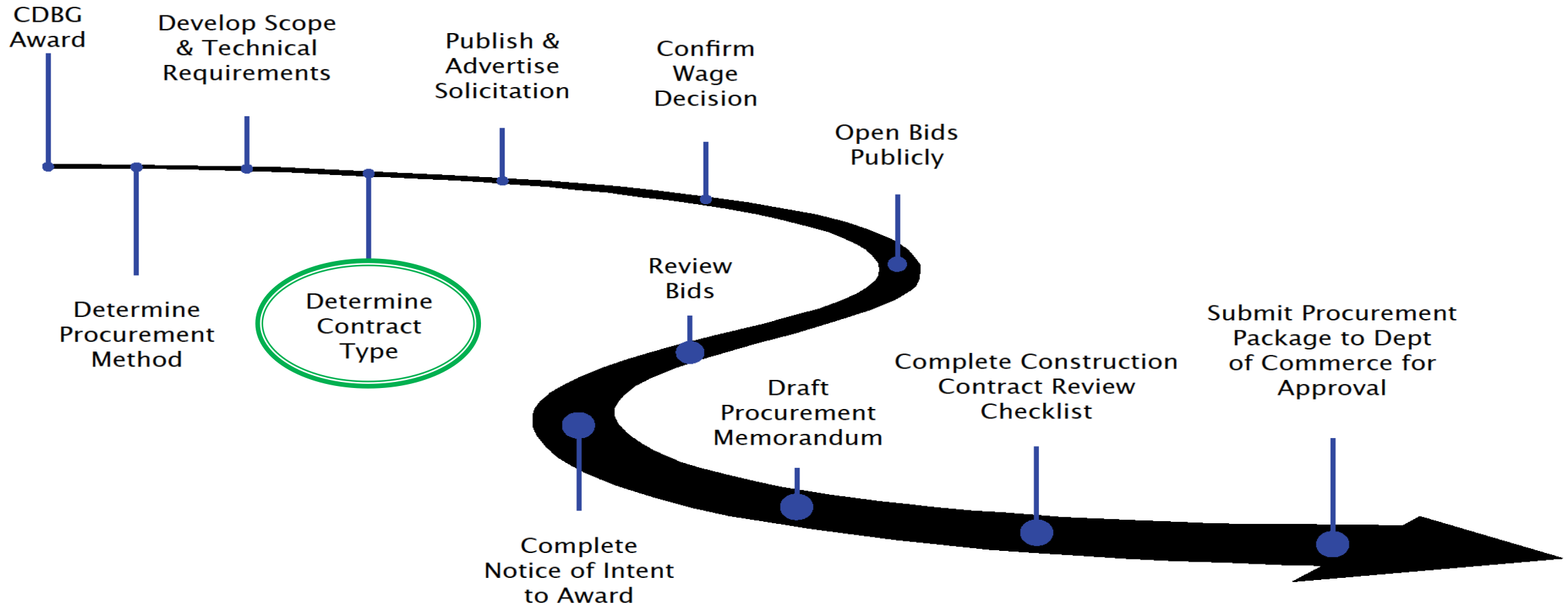
Develop Scope & Technical Requirements

► Detailed Bid Requirements

- Bid documents **must match scope** in CDBG application (amendment & possibly new ERR required if scope is different)
- Bid package must have all contractual terms/conditions applicable to procurement
 - Ensure environmental mitigation measures are included in bid documents, as applicable
- Specify that bid prices must be good for at least 60 days after bid opening
 - 90 days recommended

Develop Scope & Technical Requirements

- ▶ Refine and **document** cost estimate
 - CDBG–ineligible costs must be separate in scope and bids
- ▶ Companies who assist with drafting the scope of work and/or cost estimate are ineligible to bid – unfair competition
- ▶ Upon completion of the bid package, pre–review using Construction Contract Review Checklist, then submit to GA for their review to ensure the scope is consistent with the approved CDBG application

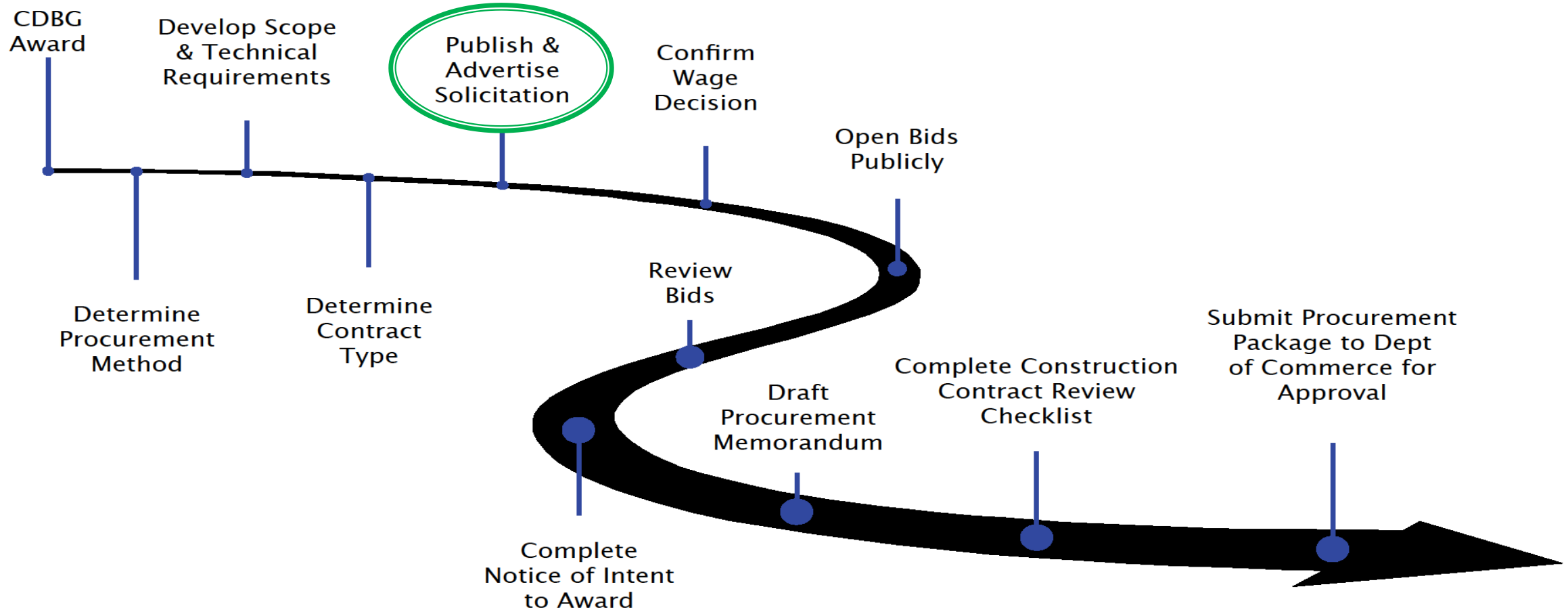


PROCUREMENT TIMELINE

Determine Contract Type



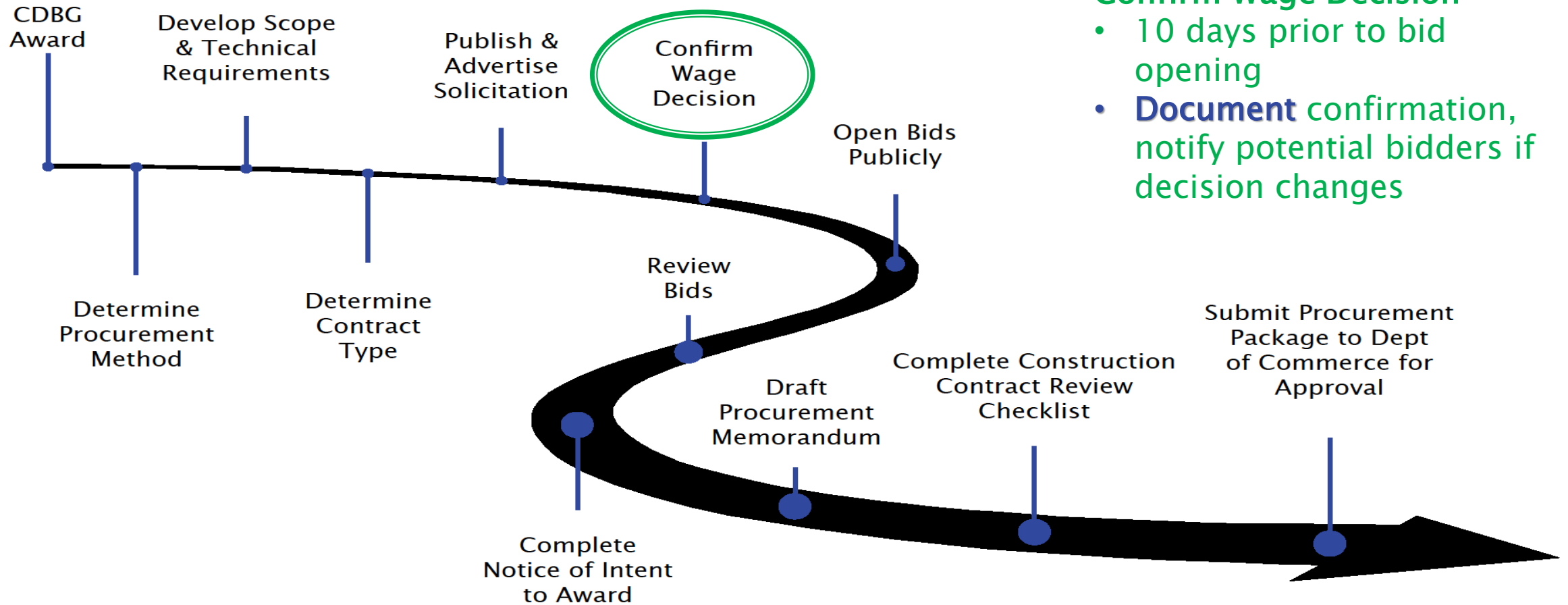
- ▶ Only use firm, fixed-price contracts for all goods and services
- ▶ Cost plus a percentage is **not allowable**
- ▶ For competitive sealed bids, contract type must be **firm, fixed-price**



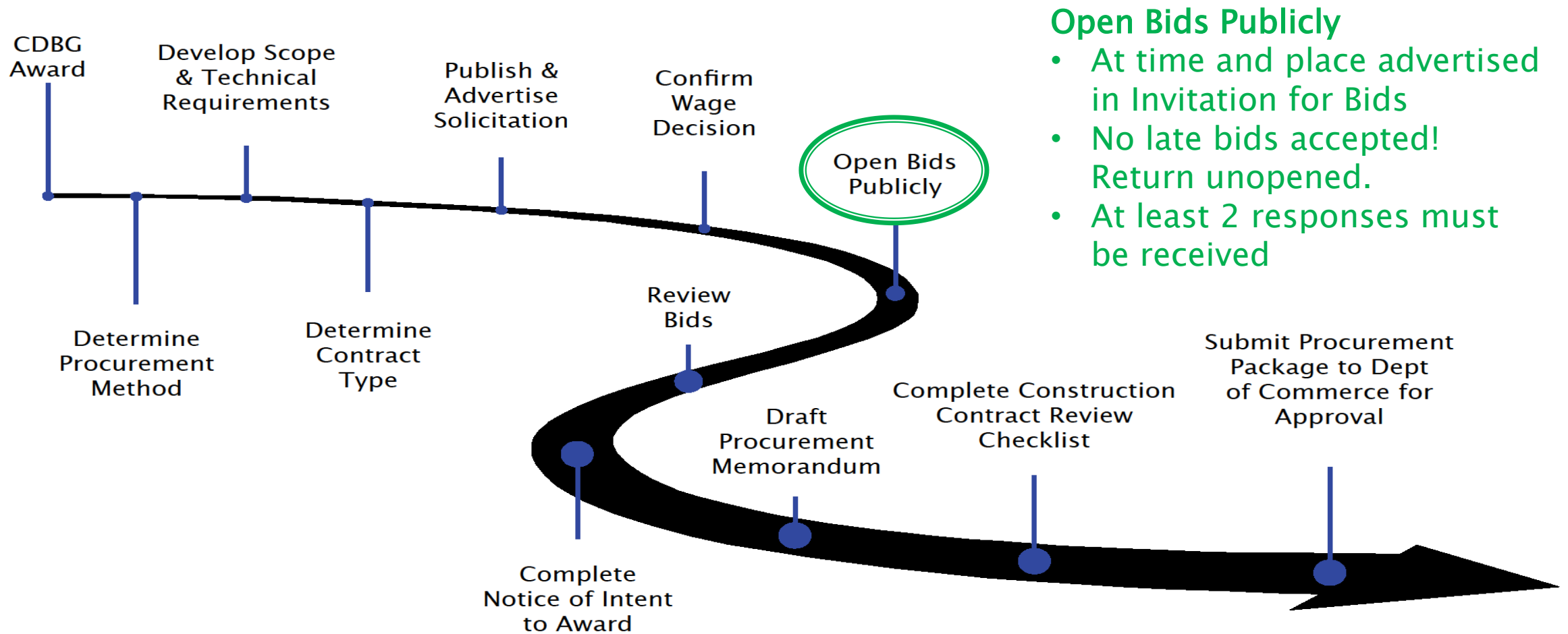
PROCUREMENT TIMELINE

Publish and Advertise Solicitation (Ch. 8, p. 12)

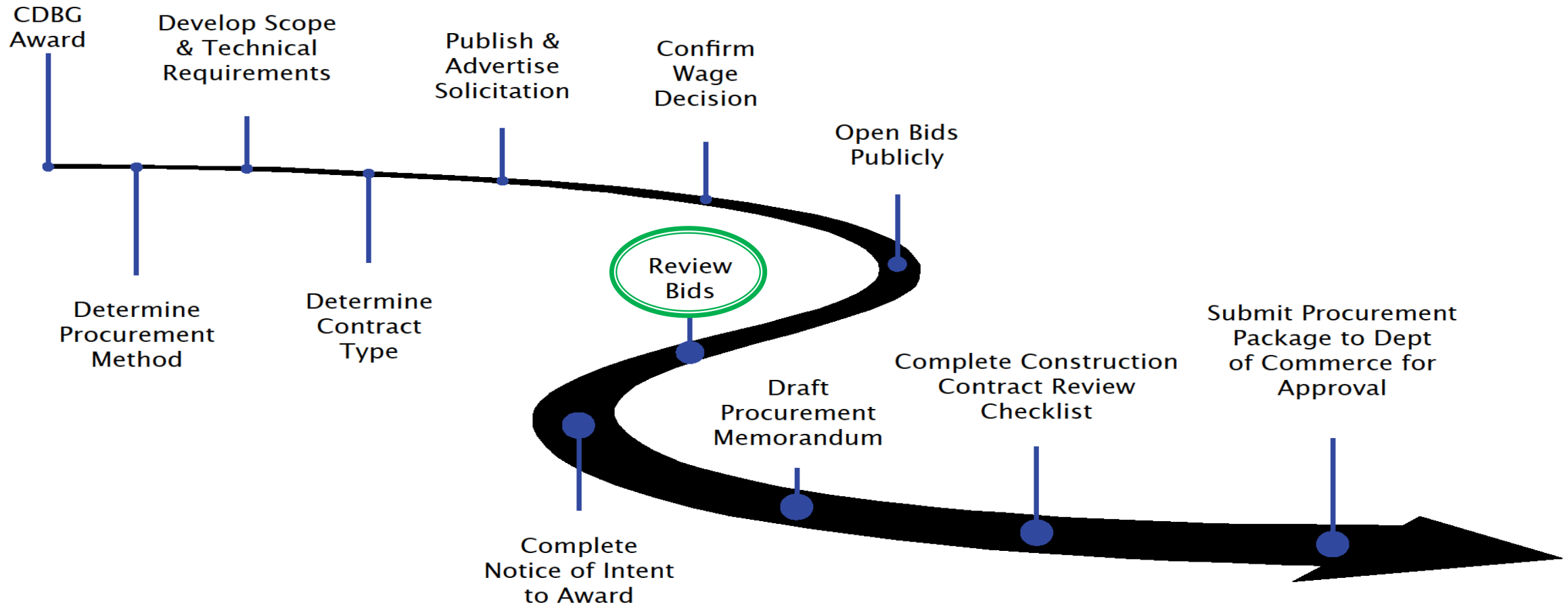
- ▶ Bid process is officially initiated by publishing an invitation for bids (IFB)
 - Advertise for minimum of 30 days prior to bid opening, not counting publication date
 - Shortened bid periods must have advance GA approval
 - Also use direct solicitation, which must be documented
 - **Document** method and location of advertising and outreach
- ▶ Include location of pre-bid conference
 - Not required; must have prior GA approval to hold mandatory pre-bid conference



PROCUREMENT TIMELINE



PROCUREMENT TIMELINE



PROCUREMENT TIMELINE

Review Bids (Ch. 8, p. 24–25)

- ▶ Award contract to the **responsible and responsive** bidder that is lowest in price
 - If not the lowest bidder, must document the basis and have engineer provide recommendation
 - Use firm, fixed-price contracts with unit prices and quantities
- ▶ Bid must provide firm, fixed price for scope of work
- ▶ Keep all records of procurement – cost/price analysis, method, contract type, selection/rejection, basis of price, protests, etc.
- ▶ Confirm and **document** contractor State and **SAM** eligibility

Review Bids: Handling Errors (Ch. 8, p. 25)

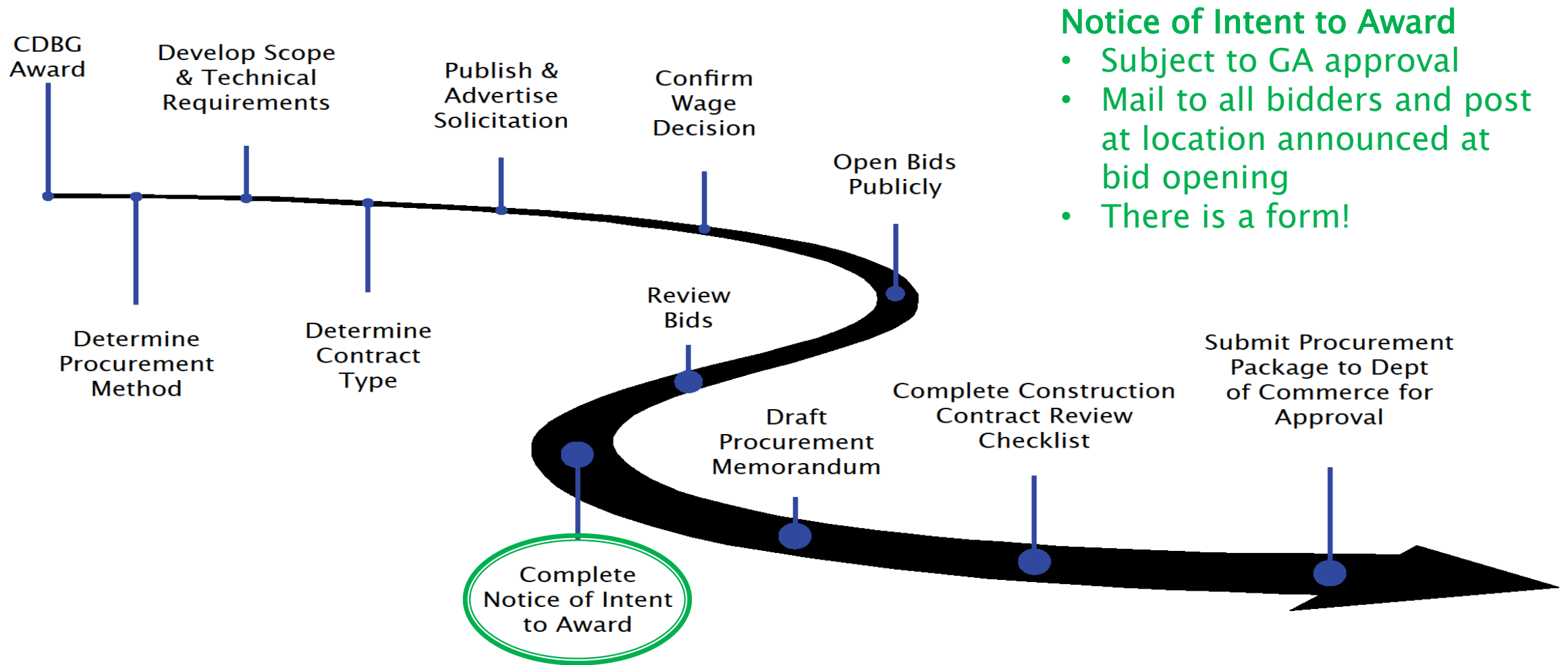
- ▶ Prior to bid opening, an error on a bid may be corrected in writing by the bidder
- ▶ After bid opening, the bid evaluator (engineer) may only note computation errors in the line item totals, not the unit prices
 - Should be addressed on the certified bid tab (not the bidder's form)
 - Notify the bidder when the error is discovered
 - If selected for award, include written explanation of correction
 - Cannot use change orders to correct bid document errors

Review Bids: Bids Over Budget (Ch. 8, p. 13–14)

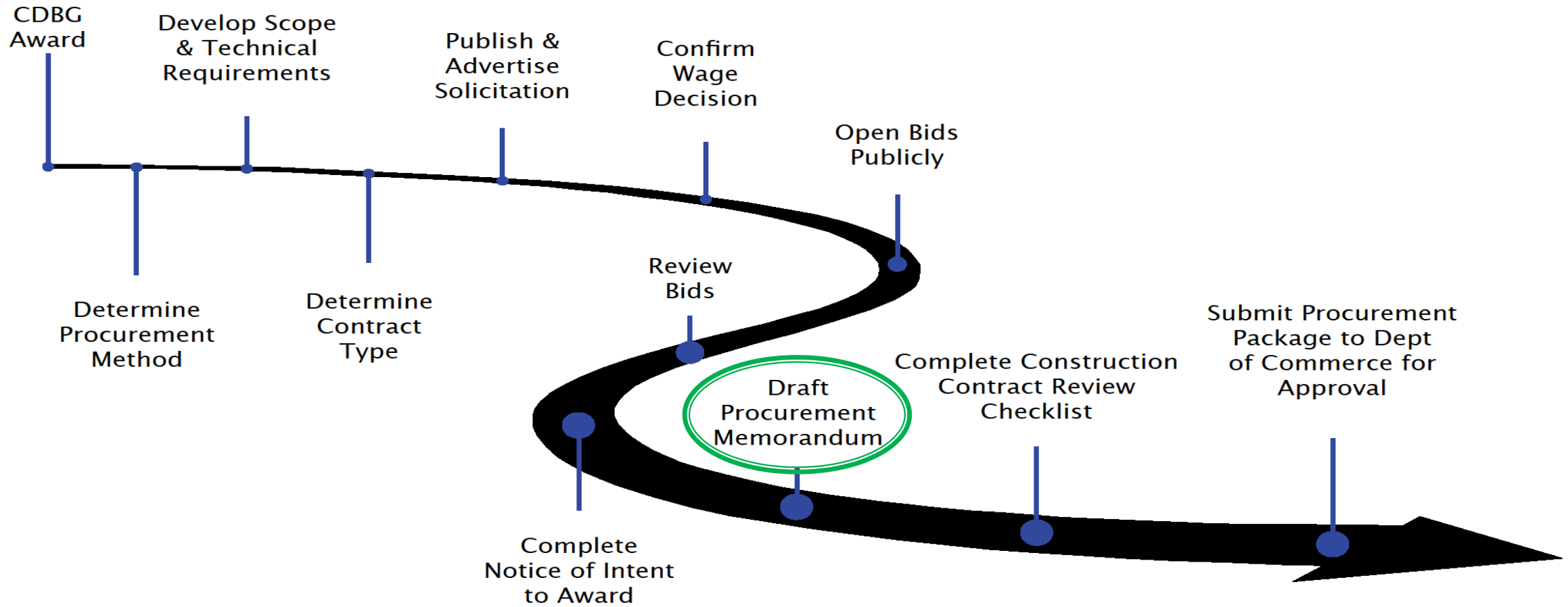
- ▶ **For bids over budget by 10% or less, negotiate with the lowest responsive and responsible bidder**
 - **Document** that time/circumstances will not permit delay for re-bidding
 - Base bid, less deductive alternates, cannot exceed available funds by more than 10%
 - Negotiated price must be lower than the lowest rejected bid under original solicitation
 - Minor changes allowed, with prior GA approval
 - Significant changes require re-bidding

Review Bids: Bids Over Budget

- ▶ If all bids are more than 10% over budget, grantee cannot negotiate with bidders
- ▶ Must re-bid or identify local funds to cover the difference
 - If additional funds are committed by the local government for the difference between the lowest base bid and the approved available funds for the project, request GA approval



PROCUREMENT TIMELINE



PROCUREMENT TIMELINE

Procurement Memorandum

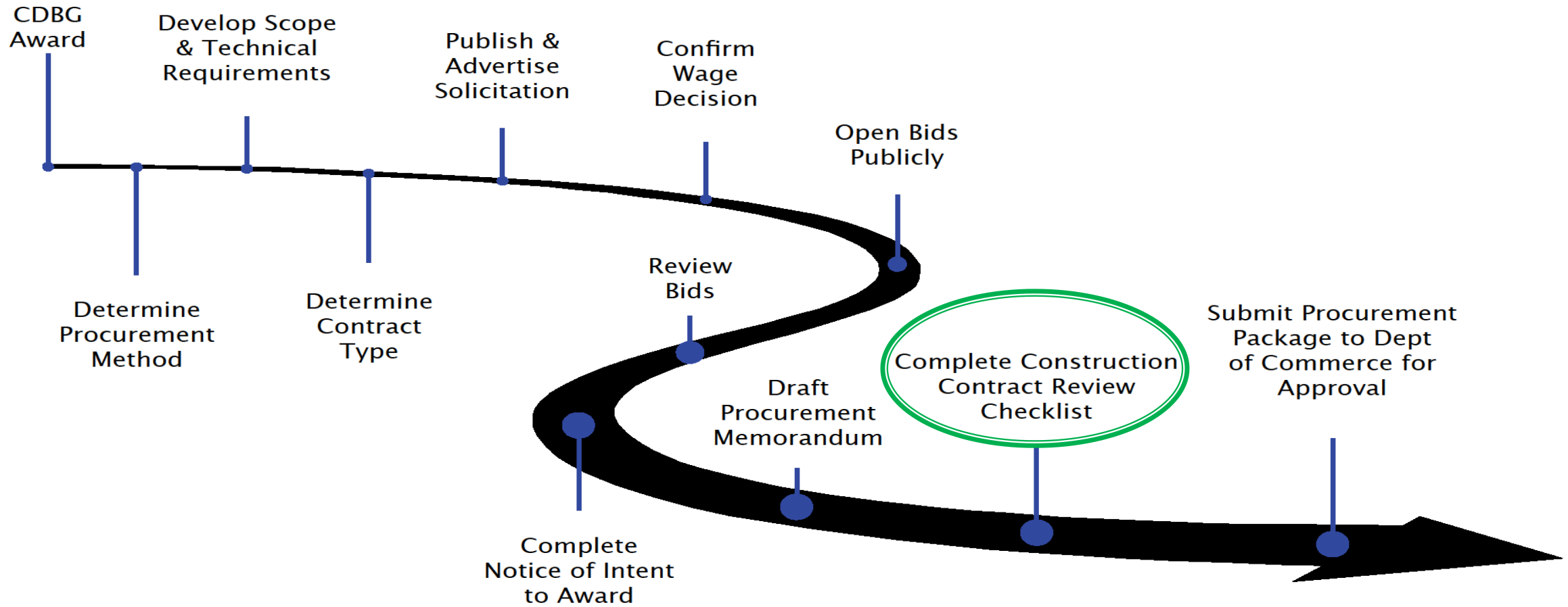
Tell the story of the procurement process

- Publication date
- Procurement process
- Advertising method
- Registration requirements
- Pre-bid conference (if held)
- Bid addenda
- Bid opening details
- Number of bids received
- Who reviewed
- Bid review outcomes
 - Responsiveness
 - Cost reasonableness
 - Lowest responsive/responsible bidder
 - Recommended bidder/bid price
- Late bids and method to address

Procurement Memorandum

Other Elements

- ▶ The Procurement Memo must also include, if applicable:
 - Identification and explanation of any bid discrepancies and how they were considered in accordance with the bid documents
 - Whether any additive or deductive alternates were accepted and the total recommended contract amount
 - Explanation for any delays in submitting bid documents for approval



PROCUREMENT TIMELINE

Complete Construction Contract Review Checklist: Contracting

- ▶ Contract should reference the bid proposal, scope of work must mirror the application
 - If scope expands or changes, reach out to GA for any additional review/approval
- ▶ Contracts should not be pre-dated in the bid package
- ▶ Only issue a Notice of Intent to Award subject to GA review

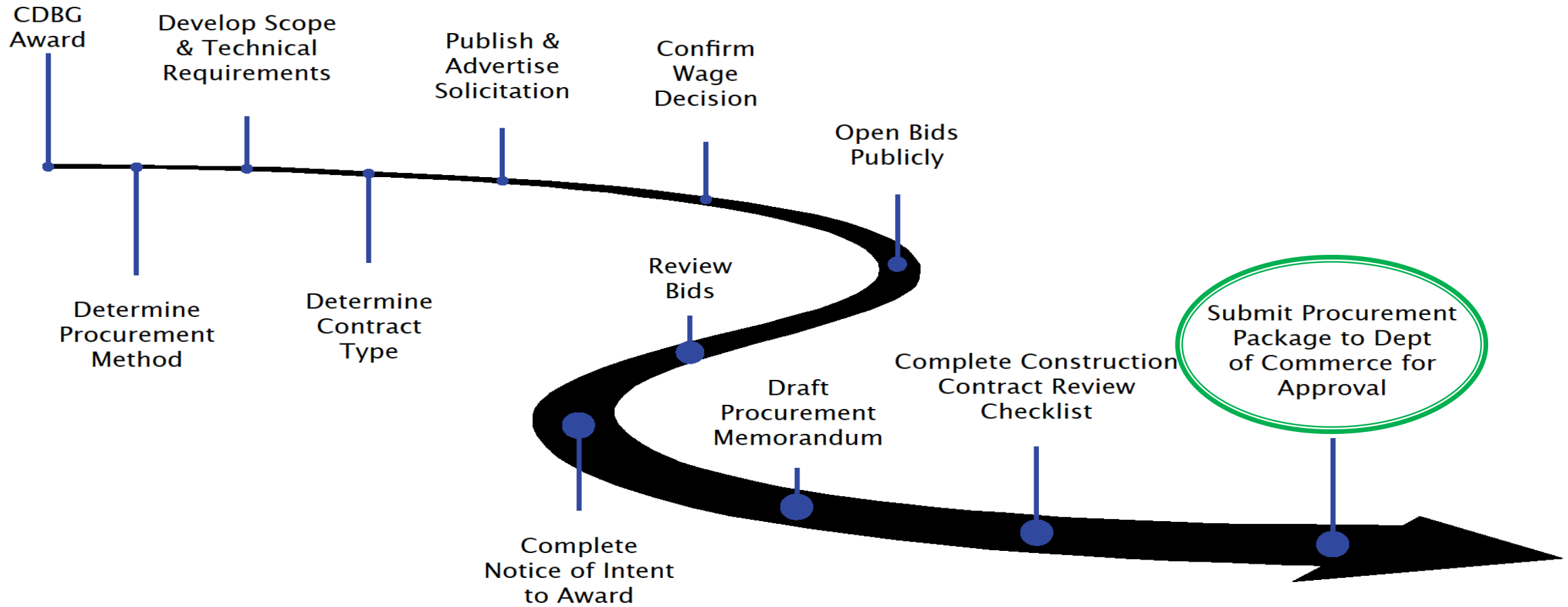
Complete Construction Contract Review Checklist: General Contract Requirements

- ▶ Time frame for work
- ▶ Technical specifications & drawings
- ▶ If professional services, performance measures &/or payment schedule
 - Timetable, cost breakouts by service line item, etc.

Complete Construction Contract Review Checklist: General Contract Requirements

- ▶ Scope of work
- ▶ Firm fixed contract amount
 - Identify unit price bids
 - Include a “not to exceed” clause, if applicable
- ▶ General provisions
 - Payment instructions
 - Change orders
 - Retainage
 - Liquidated damages
 - Work conditions





PROCUREMENT TIMELINE

Submit Procurement Package to Department of Commerce for Approval

- ▶ Use Construction Contract Review Checklist
 - For grant administrators to use before going out to bid and prior to contract submission to GA
- ▶ Completed acquisition certification required from grantee
- ▶ Submit contracts **within 20 days of bid opening**
 - Package must be complete – do not leave items out – or contract approval will be delayed

Submit Procurement Package to Department of Commerce for Approval

- ▶ Complete the C-1 Contract Transmittal Form
 - Include unexecuted copy of the contract documents
- ▶ If cost overruns to be paid by locality, written funding commitment and budget revision must be submitted
- ▶ If construction period will exceed grant period, submit request for project extension

Knowledge Check

- ▶ Under the Grants Administration/CDBG requirements, procurement of which of the following is allowed using only a Request for Qualifications process?
 - a. Construction contractor
 - b. Accounting services
 - c. Architectural services
 - d. Environmental consulting services

Knowledge Check

- ▶ What type of contract may you use for infrastructure construction projects? (check all that apply)
 - a. Lump sum
 - b. Firm, fixed-price
 - c. Maximum, not to exceed
 - d. Cost plus a percentage

Knowledge Check

- ▶ You conduct a competitive sealed bid process for a construction project. The CDBG budget is \$200,000, and the responsive and responsible bids come in at A) \$215,000, B) \$218,000, and C) \$230,000. What can you do next? (check all that apply)
 - a. Re-bid the contract
 - b. If time will not permit a re-bid, negotiate with Bidder A and Bidder B and award the contract to the firm that can complete the scope of work closest to the original, but within budget
 - c. If time will not permit a re-bid, negotiate with Bidder A to make minor changes to the scope of work that reduce the cost to within budget
 - d. Identify local funds to cover the shortfall, submit a request to use those funds to GA, and upon approval, award the contract to Bidder A

Section 3



Section 3

- ▶ Section 3 of the Housing and Urban Development Act of 1968 (24 CFR Part 135)
- ▶ Employment and other economic opportunities generated by certain CDBG activities shall, “to the greatest extent feasible,” be directed to low- and very low-income persons, and to business concerns that provide economic opportunities to low- and very low-income persons
 - Regulation is race & gender neutral
 - Applies to new jobs & contracts only

Section 3 Applicability

- ▶ Grantees that receive \$200,000+ in CDBG funds are required to comply with Section 3
 - Includes jobs that directly support rehab/construction activities, including management/admin positions
 - This requirement “flows down” to subrecipients, developers, etc.
- ▶ AND...if contracts/subcontracts for construction-related work exceed \$100,000, responsibility for Section 3 compliance shared with contractor/subcontractors on those contracts

Revised Section 3 Final Rule

- Full compliance required by **July 1, 2021**
- Change to outcome measures
 - Old Rule: **New hires**
 - Revised Rule: **Labor hours**
- New/revised definitions
 - Now: Section 3 Resident
 - Revised Rule: Section 3 Worker
 - Revised definition of Section 3 Business

Revised Section 3 Final Rule: HUD Intent

- Focuses on key outcome metrics, such as the sustained employment of individuals in targeted populations.
- Credits retention of low- and very low-income employees and successful sustained employment in the reporting metrics.
- Aligns Section 3 reporting with standard business practices and payroll tracking methods.
- Allows tailored outcome benchmarks for different geographies and/or different projects.
- Reduces reporting requirements for grantees who meet outcome benchmarks.

Labor Standards



Federal Labor Standards Laws

- ▶ Davis–Bacon requires workers be paid at least minimum wages set by DoL on all construction contracts >\$2,000 involving CDBG \$
 - Exceptions: Housing <8 units under 1 owner; demo only *unless* it is followed by construction work; some equipment installation work
- ▶ Contract Work Hours & Safety Standards Act
 - Applies to contracts greater than \$100,000
 - Workers shall not work more than 40 hours/week unless they get overtime & projects must comply with safety standards
- ▶ Copeland Anti–Kickback Act requires workers be paid weekly & only permissible payroll deductions allowed
- ▶ Fair Labor Standards Act = Federal minimum wage & overtime requirements

Labor Standards Implementation

- ▶ Ensure Davis–Bacon & other labor requirements & wage decision in all bid docs, contracts & subcontracts
- ▶ Hold a preconstruction conference to review requirements with contractor
- ▶ Review payrolls & compare to interviews weekly throughout construction
- ▶ Conduct site interviews & make sure posters on site
- ▶ Resolve issues as they arise
- ▶ Report to GA (& DOL, if necessary)

Davis–Bacon Wage Decisions

- ▶ Wage rate decisions (WRDs) provide prevailing wages by geographic location, type of construction & worker classifications
 - Building
 - Heavy
 - Highway
 - Residential
- ▶ Wage rates can be obtained online at www.beta.sam.gov (recent change)
- ▶ Recipients can sign up for the alert service to be notified of updates or modifications

Wage Decisions

- ▶ Check the wage decision web site 10 days prior to bid opening (9-day call)
 - If wage decision was modified more than 10 days prior to bid opening, must notify all bidders (issue addendum)
- ▶ Wage decisions are “locked in” on the date bids are opened provided that the contract is executed within 90 days of that date
- ▶ Wage decision must be in contract & subcontract documents
- ▶ Prime contractors must post wage decision & labor/EEO posters at project site

WRDs & Fringe Benefits

- ▶ WRDs include the total hourly wage rate paid plus, for some classifications, fringe benefits
- ▶ The rate paid may include any combination of cash wages + fringe benefits provided it = the wage + fringe amount on the WRD
- ▶ Fringe benefits include:
 - Health insurance premiums
 - Retirement contributions
 - Life insurance
 - Vacation, holidays, sick leave
- ▶ Fringe benefits do not include employer payments or contributions required by other Federal, State or local laws (SS or disability)

Labor & Pre-Construction Conferences

- ▶ At the pre-con, cover labor requirements:
 - Prime contractor responsible for all subs compliance incl. that they are registered in SAM & not on state or federal debarred list
 - Review wage decision, incl. additional classifications that might be required
 - Discuss how foreman, split classifications, apprentices/trainees & helpers are handled
 - Discuss payrolls & statements of compliance submission
 - Distribute job site posters
 - Explain how employee interviews will be conducted
 - Talk about what happens in cases of noncompliance
- ▶ Follow up after regarding additional classifications needed

Wage Decisions

- ▶ Additional classifications often necessary
 - Submit requests to GA utilizing the Report of Additional Classification and Rate form – form and instructions available in Chapter 9 attachments
 - Provide supporting documentation including description of the duties of the affected employee
 - Not permissible to use lowest rate as benchmark; proposed rate must bear a “reasonable relationship” to the rates on the wage determination
 - Rate is compared to classifications within the same category (i.e., skilled crafts, laborer, power equipment operators & truck drivers)
 - Incomplete requests will delay approval

Payroll Submission

- ▶ Payroll reports required to be submitted to grantee within 7-11 working days of end of pay period
 - Contractor/subs must use payroll form (WH 347) or equivalent
 - Must include signed Certification of Compliance (original signed in ink by legally authorized employee)
 - Should not include employees' social security number
 - Should only show regular & overtime hours worked on the CDBG-funded project
 - Must indicate how fringe benefits are paid on Statement of Compliance
 - Check deductions to ensure on authorized list

Payroll Review

- ▶ Recipients must ensure payrolls come in on schedule
 - Prime submits its payroll + all subs (that have been reviewed by the prime prior to submittal)
- ▶ Recipients must review payrolls
 - Payroll reviews “shall be comprehensive”
 - Early reviews mean problems can be resolved quickly
 - Refer to Payroll Falsification Indicators for guidance (See Contractor’s Guide to Prevailing Wage Requirements)
 - Also look at classifications & pay, overtime & deductions
 - Compare to interviews that are done on site (HUD 11s) particularly duties observed & red flags in terms of proportion of laborers to other workers



Deductions

- ▶ The only allowable payroll deductions are those specifically listed in the Copeland Anti-kickback Act provisions
 - Deductions NOT listed in the Act are NOT allowed even with the worker's permission *unless* specific approval provided by DoL
- ▶ Unspecified/unauthorized payroll deductions are a serious discrepancy & must be resolved with the prime prior to further contractor payments

On Site Labor Interviews



- ▶ Recipients must conduct job site interviews of workers using Record of Interview form (HUD 11)
- ▶ Must get a representative sampling for interviews
 - By trade or job classification
 - Employees from both the prime & subcontractors
 - Throughout the construction period
- **Must witness the type of work being done by each worker interviewed & include this on the HUD 11**

Labor Interviews

- ▶ Must compare interviews to payroll forms (fill out bottom of HUD 11 & sign)
 - By individual (type of work observed, classification, rate of pay, hours worked, etc.)

AND

- By company (who is working on the job site?)
- ▶ Resolve any discrepancies or issues in a timely fashion
 - Follow up with the employee first
 - Employer should resolve within 30 days

Restitution

- ▶ If underpayment of wages, contractor must make restitution
 - Recipient notifies the prime contractor as to computation of restitution
 - Contractor must find & pay worker
 - Contractor submits corrected payroll & statement of compliance, which recipient must review & approve
- ▶ If workers not found:
 - Contractor must deposit/escrow restitution & provide proof to grantee
 - Grantee must attempt to locate employee (certified mail, etc.)
- ▶ Reporting to DoL required if amount >\$1,000

Liquidated Damages

- ▶ Contractors may also be liable for liquidated damages
 - **\$25/day** per employee who worked overtime & was not paid overtime wages
- ▶ CDBG funds may be withheld until contractor pays the liquidated damages
 - If this occurs, contractors must be notified in writing and that they have right to appeal
 - Inform DLG
 - Appeals must be in writing, state the reason for liquidated damages and sent to DoL

Addressing Labor Disputes

- ▶ In cases of dispute, can request a DoL review & reconsideration
- ▶ If payments owed, DoL can use withholding and/or escrow accounts
- ▶ Willful violation can cause debarment, suspension or other sanctions
- ▶ Falsified records subject to prosecution

Knowledge Check

- ▶ Which of the following is NOT included in fringe benefits?
 - a. Retirement contributions
 - b. Social Security
 - c. Vacation accrual
 - d. Health insurance premiums
 - e. Life insurance

Questions?





THANK YOU!!!